

## REMARKS/ARGUMENTS

Claims 11, 12, 16, 18, 22, 24 and 44-47 have been amended. Claims 1-4, 11- 26, 28, 29, 33, 34, 38, 39, and 42-47 are pending in the present application, of which claims 1, 4, 11-13, 16-19, 22-26 and 42-47 are the independent claims. Applicant believes that the present application is in condition for allowance, for which prompt and favorable action is respectfully requested.

Support for the claim amendments can be found, for example, in paragraphs [1033], [1032] and [1035] of the originally-filed application. No new matter is believed to have been added.

### *Claim Rejections – 35 USC § 102*

Claims 1-4, 11-26, 28-29, 33, 34, 38, 39 and 42-47 are rejected under 35 U.S.C. § 102(b) as being anticipated by Tiedemann (U.S. 6,396,867). Reconsideration and withdrawal of this rejection are respectfully requested.

MPEP § 2131 states that “[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (emphasis added). MPEP § 2131 also states that “[t]he identical invention must be shown in **as complete detail** as is contained in the ... claim” and “[t]he elements must be **arranged as required by the claim.**” (emphasis added). MPEP § 2112 (IV) states that in order to “establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” MPEP § 2112 (IV) also states that inherency “**may not be established by probabilities or possibilities.**” In the present case, Applicant submits that Tiedemann does not meet this high burden for establishing anticipation under 35 U.S.C. § 102.

Independent claims 4, 11, 13, 16, 17, 18, 23, 24, 25, 26 and 42-47 each includes the features of receiving or transmitting a forward link power control instruction on a forward link common channel, wherein the forward link common channel is shared by a plurality of remote stations. Tiedemann does not disclose at least the features of receiving or transmitting a forward link power control instruction on a forward link common channel, wherein the forward link common channel is shared by a plurality of remote stations, and therefore does not anticipate independent claims 4, 11, 13, 16, 17, 18, 23, 24, 25, 26 and 42-47.

The Office Action cites reference number 10, col. 7, lines 19-26, col. 8, 46-63, col. 2, lines 41-61 and col. 6, lines 38-62 of Tiedemann as allegedly disclosing the above features of

claims 4, 11, 13, 16, 17, 18, 23, 24, 25, 26 and 42-47. *See* pages 2 and 3 of the Office Action. Applicant respectfully disagrees.

To begin, reference number 10 of Tiedemann refers to multiple signal paths of a data transmission from a base station 4 to a remote station 6 due to signal reflections. *See* col. 8, lines 33-45 of Tiedemann (“Data transmission from base station 4 to remote station 6 occurs on the forward link through signal paths 10 ... [t]he signal path can be a straight path ... or a reflected path...”). Reference number 10 of Tiedemann in no way refers to a forward link common channel that is **shared** by a plurality of remote stations.

Col. 7, lines 19-26 of Tiedemann discloses determining “the quality of the forward link signal, as received by the remote station, by measuring the amplitude of the reverse link power control bits which are transmitted on the forward traffic channel.” Col. 8, lines 43-63 of Tiedemann discusses the encoder 22 in the base station 4 with reference to Figures 2 and 3 of Tiedemann. Col. 2, lines 41-61 of Tiedemann discloses several reasons for controlling transmission power on a “forward link.” Col. 6, lines 38-62 of Tiedemann discloses that transmission power of a “forward traffic channel is dependent on the data rate” and gives examples of different data rates. Nowhere in these cited passages or anywhere else does Tiedemann disclose receiving or transmitting a forward link power control instruction on a forward link common channel that is **shared** by a plurality of remote stations. For instance, nowhere does Tiedemann disclose that the “forward link” or the “forward traffic channel” discussed in the cited passages comprises a forward link common channel that is **shared** by a plurality of remote stations.

Further, the present Office Action fails to provide any explanation of how the cited passages of Tiedemann allegedly disclose a forward link common channel that is **shared** by a plurality of remote stations. Applicant submits that the Board of Patent Appeals and Interferences recently found that an Office Action’s mere citation to passages of a reference in support of a § 102 rejection without providing an explanation constitutes reversible error. In *Ex parte Dykes*, the BPAI stated:

[h]ere, the Examiner has **merely directed our attention** to an ‘EJB Type’ column in Beust and thus has **not clearly shown** and has left it up to us to speculate as to how this column in Beust defines resource references within a session EJB. We can only rule on the basis of the evidence that is provided in support of the rejection, and here we find it deficient. The allocation of burdens requires that the USPTO produce the factual basis for its rejection

of an application under 35 U.S.C. § 102. *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). The one who bears **the** initial burden of presenting a prima facie case of unpatentability is the Examiner. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Therefore, we find that the Examiner has *not* set forth a sufficient initial showing of anticipation, and we find that Appellants have shown error in the Examiner's rejection of claims 2 and 10."

See *Ex parte Dykes et al.*, Appeal No. 2009-7556 (BPAI) (emphasis added). A copy of this decision is attached hereto.

For at least the reasons given above, Applicant submits that Tiedemann clearly does not disclose receiving or transmitting a forward link power control instruction on a forward link common channel that is shared by a plurality of remote stations, and therefore does not anticipate claims 4, 11, 13, 16, 17, 18, 23, 24, 25, 26 and 42-47.

Independent claims 1, 12, 19 and 22 each includes the features of an apparatus receiving a forward link power control instruction on a forward link common channel wherein the apparatus shares the forward link common channel with at least one remote station. Tiedemann fails to disclose the above features of claims 1, 12, 19 and 22 for similar reasons given above for independent claims 4, 11, 13, 16, 17, 18, 23, 24, 25, 26 and 42-47.

Therefore, Tiedemann fails to anticipate independent claims 1, 4, 11-13, 16-19, 22-26 and 42-47. Further, Tiedemann is disqualified under 35 USC § 103(c) from being used as prior art in a § 103 rejection, as set forth in Applicant's earlier response dated April 26, 2010.

For at least the reasons given above, Applicant submits that independent claims 1, 4, 11-13, 16-19, 22-26 and 42-47 are allowable, and respectfully requests that the rejection of claims 1, 4, 11-13, 16-19, 22-26 and 42-47 be withdrawn.

The other claims currently under consideration in the application are dependent from their respective independent claims discussed above and therefore are believed to be allowable over the applied references for at least similar reasons. Because each dependent claim is deemed to define an additional aspect of the invention, the individual consideration of each on its own merits is respectfully requested. Reconsideration and withdrawal of the rejections of the dependent claims are respectfully requested.

## CONCLUSION

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

Dated May 11, 2011

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